

## **REMARKS**

Applicants respectfully request entry of the following amendments and remarks in response to the Office Action mailed December 30, 2008. Applicants respectfully submit that the amendments and remarks contained herein place the instant application in condition for allowance.

Upon entry of the amendments in this response, claims 5 – 12, 20 – 27, 38, and 44 – 46 are pending. In particular, Applicants add claims 44 – 46, amend claims 5 – 11, 20, and 38, and cancel claims 12 and 27 without prejudice, waiver, or disclaimer. Applicants cancel claims 12 and 27 merely to reduce the number of disputed issues and to facilitate early allowance and issuance of other claims in the present application. Applicants reserve the right to pursue the subject matter of these canceled claims in a continuing application, if Applicants so choose, and do not intend to dedicate the canceled subject matter to the public. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

### **I. Rejections Under 35 U.S.C. §101**

The Office Action indicates that claims 20 – 27 stand rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter. Applicants amend claim 20, as indicated above. Applicants submit that these amendments comply with the Office Action request and that claims 20 – 27, as amended, fulfill all the requirements of 35 U.S.C. §101.

### **II. Rejections Under 35 U.S.C. §103**

#### **A. Claim 5 is Allowable Over *Klassen* in view of *Malik* further in view of *Roskind***

The Office Action indicates that claim 5 stands rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent Publication Number 20050066070 ("*Klassen*") in view of U.S. Patent Number 7,007,085 ("*Malik*") further in view of U.S. Patent Publication

Number 2003/0065721 ("*Roskind*"). Applicants respectfully traverse this rejection for at least the reason that *Klassen* in view of *Malik* further in view of *Roskind* fails to disclose, teach, or suggest all of the elements of claim 5. More specifically, claim 5 recites:

A communication method comprising:  
providing for display a first instant messaging (IM) message of an IM session between a user and a contact;  
calculating an elapsed time from the displaying of the first IM message;  
determining whether a second IM message has been displayed within the elapsed time;  
providing for display a first time indication, the first time indication being associated with the first IM message, the first time indication being displayed in response to determining that the second IM message has not been displayed within the elapsed time, the first time indication displaying a time that the first message was sent;  
querying the user to determine whether to include a termination time indication for an IM log of the IM session, the termination time indication indicating a time the IM session terminated;  
providing a status bar area within the IM chat window, the status bar area being distinct from the IM dialogue box; and  
***selectively providing for display a most-recently-displayed IM time in the status bar area, the most-recently-displayed IM time being associated with the most-recently-displayed IM message.***

***(Emphasis added).***

Applicants respectfully submit that claim 5, as amended, is allowable over the cited art for at least the reason that none of *Kasson*, *Malik*, and *Roskind*, taken alone or in combination, discloses, teaches, or suggests a "communication method comprising... ***selectively providing for display a most-recently-displayed IM time in the status bar area, the most-recently-displayed IM time being associated with the most-recently-displayed IM message***" as recited in claim 5, as amended. More specifically, the Office Action admits that "*Klassen*, *Malik*, and *Roskind* did not explicitly state providing a status area within the IM chat window, the status area being distinct from the IM dialogue box" (OA page 10, line 14).

Additionally, the Office Action argues that "Applicants' Admitted Prior Art" ("*AAPA*") "areas above and below item 205... within the IM chat window that are distinct from the IM

dialogue box. As such AAPA shows that it is well known... that instant messaging chat windows include status windows" (OA page 10, line 16). Applicants respectfully disagree. First, FIG. 2 does not illustrate "***selectively providing for display a most-recently-displayed IM time in the status bar area, the most-recently-displayed IM time being associated with the most-recently-displayed IM message***" as recited in claim 5, as amended. Nowhere is there even a suggestion of displaying anything in the status bar area. Additionally, notwithstanding this fact, the Office Action fails to establish a proper well known rejection. First, the Office Action fails to include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions, as required. Second, merely providing a reference (or a couple of references) that allegedly discloses the subject matter in question, does not rise to an evidentiary level of being well known in the industry. For at least these specific and particular reasons, Applicants submit the cited art does not render claim 5 obvious and that the rejection based on AAPA and allegedly well known subject matter is improper. For at least these reasons, claim 5, as amended, is allowable.

**B. Claim 20 is Allowable Over Klassen in view of Malik further in view of Roskind**

The Office Action indicates that claim 20 stands rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent Publication Number 20050066070 ("*Klassen*") in view of U.S. Patent Number 7,007,085 ("*Malik*") further in view of U.S. Patent Publication Number 2003/0065721 ("*Roskind*"). Applicants respectfully traverse this rejection for at least the reason that *Klassen* in view of *Malik* further in view of *Roskind* fails to disclose, teach, or suggest all of the elements of claim 20. More specifically, claim 20 recites:

A computer-readable medium that stores a program, such that when executed by a computer, performs at least the following:  
provide for display a first instant messaging (IM) message of an IM session between a user and a contact;  
calculate an elapsed time from the computer-readable code adapted to instruct a programmable device to display of the

first IM message;

determine whether a second IM message has been displayed within the elapsed time;

provide for display a first time indication, the first time indication being associated with the first IM message, the first time indication being displayed in response to computer-readable code adapted to instruct a programmable device to determine that the second IM message has not been displayed within the elapsed time, the first time indication displaying a time that the first message was sent;

query the user to determine whether to include a termination time indication for an IM log of the IM session, the termination time indication indicating a time the IM session terminated;

provide a status bar area within the IM chat window, the status bar area being distinct from the IM dialogue box; and

***selectively provide for display a most-recently-displayed IM time in the status bar area, the most-recently-displayed IM time being associated with the most-recently-displayed IM message.***

***(Emphasis added).***

Applicants respectfully submit that claim 20, as amended, is allowable over the cited art for at least the reason that none of *Klassen*, *Malik*, and *Roskind*, taken alone or in combination, discloses, teaches, or suggests a “computer-readable medium that stores a program, such that when executed by a computer, performs at least the following... ***selectively provide for display a most-recently-displayed IM time in the status bar area, the most-recently-displayed IM time being associated with the most-recently-displayed IM message***” as recited in claim 20, as amended. More specifically, the Office Action admits that “*Klassen*, *Malik*, and *Roskind* did not explicitly state providing a status area within the IM chat window, the status area being distinct from the IM dialogue box” (OA page 10, line 14).

Additionally, the Office Action argues that “Applicants’ Admitted Prior Art” (“AAPA”) “areas above and below item 205... within the IM chat window that are distinct from the IM dialogue box. As such AAPA shows that it is well known... that instant messaging chat windows include status windows” (OA page 10, line 16). Applicants respectfully disagree. First, FIG. 2 does not illustrate “***selectively provide for display a most-recently-displayed IM time in the status bar area, the most-recently-displayed IM time being associated with the***

*most-recently-displayed IM message*" as recited in claim 20, as amended. Nowhere is there even a suggestion of displaying anything in the status bar area. Additionally, notwithstanding this fact, the Office Action fails to establish a proper well known rejection. First, the Office Action fails to include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions, as required. Second, merely providing a reference (or a couple of references) that allegedly discloses the subject matter in question, does not rise to an evidentiary level of being well known in the industry. For at least these specific and particular reasons, Applicants submit the cited art does not render claim 5 obvious and that the rejection based on *AAPA* and allegedly well known subject matter is improper. For at least these reasons, claim 20, as amended, is allowable.

**C. Claim 38 is Allowable Over *Klassen* in view of *Malik* further in view of *Roskind***

The Office Action indicates that claim 38 stands rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent Publication Number 20050066070 ("*Klassen*") in view of U.S. Patent Number 7,007,085 ("*Malik*") further in view of U.S. Patent Publication Number 2003/0065721 ("*Roskind*"). Applicants respectfully traverse this rejection for at least the reason that *Klassen* in view of *Malik* further in view of *Roskind* fails to disclose, teach, or suggest all of the elements of claim 38. More specifically, claim 38 recites:

A communication system comprising:  
a memory component that stores at least the following:  
message-display logic configured to provide display  
a first instant messaging (IM) message of an IM session between  
a user and a contact;  
time-calculation logic configured to calculate an  
elapsed time from the display of the first IM message;  
determination logic configured to determine  
whether a second IM message has been displayed within the  
elapsed time;  
time-display logic configured to provide for display  
a first time indication, the first time indication being associated  
with the first IM message, the first time indication being displayed  
in response to determine that the second IM message has not

been displayed within the elapsed time, the first time indication displaying the time the first message was sent;

query logic configured to query the user to determine whether to include a termination time indication for an IM log of the IM session, the termination time indication indicating a time the IM session terminated;

first provide logic configured to provide a status bar area within the IM chat window, the status bar area being distinct from the IM dialogue box; and

***second provide logic selectively provide for display a most-recently-displayed IM time in the status bar area, the most-recently-displayed IM time being associated with the most-recently-displayed IM message.***

***(Emphasis added).***

Applicants respectfully submit that claim 38, as amended, is allowable over the cited art for at least the reason that none of *Kasson, Malik*, and *Roskind*, taken alone or in combination, discloses, teaches, or suggests a “communication system comprising... ***second provide logic selectively provide for display a most-recently-displayed IM time in the status bar area, the most-recently-displayed IM time being associated with the most-recently-displayed IM message***” as recited in claim 38, as amended. More specifically, the Office Action admits that “*Klassen, Malik*, and *Roskind* did not explicitly state providing a status area within the IM chat window, the status area being distinct from the IM dialogue box” (OA page 10, line 14).

Additionally, the Office Action argues that “Applicants’ Admitted Prior Art” (“AAPA”) “areas above and below item 205... within the IM chat window that are distinct from the IM dialogue box. As such AAPA shows that it is well known... that instant messaging chat windows include status windows” (OA page 10, line 16). Applicants respectfully disagree. First, FIG. 2 does not illustrate “***second provide logic selectively provide for display a most-recently-displayed IM time in the status bar area, the most-recently-displayed IM time being associated with the most-recently-displayed IM message***” as recited in claim 38, as amended. Nowhere is there even a suggestion of displaying anything in the status bar area. Additionally, notwithstanding this fact, the Office Action fails to establish a proper well known rejection. First, the Office Action fails to include specific factual findings predicated on sound

technical and scientific reasoning to support such conclusions, as required. Second, merely providing a reference (or a couple of references) that allegedly discloses the subject matter in question, does not rise to an evidentiary level of being well known in the industry. For at least these specific and particular reasons, Applicants submit the cited art does not render claim 5 obvious and that the rejection based on *AAPA* and allegedly well known subject matter is improper. For at least these reasons, claim 38, as amended, is allowable.

**D. Claims 6 – 11 and 21 – 26 are Allowable Over *Klassen* in view of *Malik* further in view of *Roskind***

The Office Action indicates that claims 6 – 11 and 21 – 26 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent Publication Number 20050066070 ("*Klassen*") in view of U.S. Patent Number 7,007,085 ("*Malik*") further in view of U.S. Patent Publication Number 2003/0065721 ("*Roskind*"). Applicants respectfully traverse this rejection for at least the reason that *Klassen* in view of *Malik* further in view of *Roskind* fails to disclose, teach, or suggest all of the elements of claims 6 – 11 and 21 – 26. More specifically, dependent claims 6 – 11 are believed to be allowable for at least the reason that these claims depend from and include the elements of allowable independent claim 5. Further, dependent claims 21 – 26 are believed to be allowable for at least the reason that they depend from and include the elements of allowable independent claim 20. Because *Malik* and *Roskind* fail to overcome the deficiencies of *Klassen*, claims 6 – 11 and 21 – 26 are allowable as a matter of law. *In re Fine, Minnesota Mining and Mfg.Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002).

**E. Claims 12 and 27 are Allowable Over *Klassen* in view of *Malik* further in view of *Roskind* and further in view of *AAPA***

The Office Action indicates that claims 12 and 27 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent Publication Number 20050066070

("Klassen") in view of U.S. Patent Number 7,007,085 ("Malik") further in view of U.S. Patent Publication Number 2003/0065721 ("Roskind") and further in view of Applicant's Admitted Prior Art ("AAPA"). Applicants cancel claims 12 and 27, as indicated above, thus rendering this issue moot.

**III. New Claims 44 – 46 are Allowable**

In addition, Applicants add new claims 44 and 45. New claim 44 is allowable for at least the reason that this claim depends from allowable independent claim 1. New claim 45 is allowable for at least the reason that this claim depends from allowable independent claim 20. New claim 46 is allowable for at least the reason that this claim depends from allowable independent claim 38. *In re Fine, Minnesota Mining and Mfg.Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002). Support for this claim may be found, among other places on page 11, line 7.



### **CONCLUSION**

In light of the foregoing amendments and for at least the reasons set forth above, all objections and/or rejections have been traversed, rendered moot, and/or addressed, and that the now pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested.

Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and Official Notice, or statements interpreted similarly, should not be considered well-known for the particular and specific reasons that the claimed combinations are too complex to support such conclusions and because the Office Action does not include specific findings predicated on sound technical and scientific reasoning to support such conclusions.

If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

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